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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/275,568	03/24/1999	MICHAEL C. PITMAN	YOR919980112US1	9918

7590

09/15/2005

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EXAMINER

LY, CHEYNE D

ART UNIT PAPER NUMBER

2163

DATE MAILED: 09/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/275,568

Applicant(s)

PITMAN ET AL.

Examiner

Cheyne D. Ly

Art Unit

2163

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☒ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1,4-15 and 31-35.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.

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Continuation of 3. NOTE: The proposed amendment of "preselected association criteria" has not been entered because said amendment raises new issue that would require further consideration and/or search.

Continuation of 11. does NOT place the application in condition for allowance because:

Claims 8, 9, and 12-14 are rejected under 35 U.S.C. § 112, Second Paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

This rejection is maintained with respect to claims 8, 9, and 12-14, as recited in the previous office action mailed June 29, 2005.

Applicant's arguments are not persuasive because the instant specification defines T and W individually, however, it is not clear what "WT" represents in the equation. Further, the proposed amendment to the limitation of "the variable C" is not persuasive because of the non-entry of said amendment. Specific to claim 12, beginning on line 3, the characteristic of "represents..." is cited, however, the instant claim does not define the metes and bounds of what is meant by the phrase "represents..." For example, does the phrase "fk represents the value..." mean fk is the criterion function value, a component vector, or the combination? Clarification of the metes and bounds is required.

Claims 1, 4-15, and 31-35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. NEW MATTER REJECTION.

This rejection is maintained with respect to claims 1, 4-15, and 31-35, as recited in the previous office action, mailed June 29, 2005.

Specific to the limitation of "association criteria," Applicant's argument is not persuasive because of the non-entry of the proposed amendment. Further, specific to the limitation of "such that they key...", Applicant's argument is not persuasive as discussed the previous Office Action.

Claims 1, 4-15, and 31-35 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

This rejection is maintained with respect to claims 1, 4-15, and 31-35, as recited in the previous office action, mailed June 29, 2005. Applicant's argument is not persuasive as discussed the previous Office Action.

Claims 1, 4, and 5 are rejected under 35 U.S.C. 102(a) and 102(e)(2) as being anticipated by Platt et al. (US PN 5,784,294A).

This rejection is maintained with respect to claims 1, 4, and 5 as recited in the previous office action, mailed June 29, 2005. Applicant's argument is not persuasive as discussed the previous Office Action.

Continuation of 13. Other: Applicant's argument directed to the Objection to the amendment to the specification under 35 U.S.C. section 132(a) has been found to be persuasive.

CAC
9/13/05